



B5

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: LIN 01 172 55729 Office: NEBRASKA SERVICE CENTER

Date: FEB 05 2003

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a pharmaceutical researcher. At the time of filing, the petitioner was a postdoctoral researcher at Wayne State University ("WSU"), where the petitioner had previously obtained his M.S. and Ph.D. degrees. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner describes his work:

Since 1996, I have been working as a major researcher in Dr. Patrick Woster's leading research group at Wayne State University. My research focuses on the synthesis and biological evaluation of polyamine analogues. These researches significantly contribute to the [effort to] conquer [some] of the most widespread medical disorders such as cancers, malaria, and many other fatal diseases. . . .

Polyamines play a very important role in human metabolism. They are the essential regulatory agents in cell growth and differentiation. Pharmacological intervention [in] these processes will . . . lead to anticancer activity. With the help of computer modeling, I synthesized several polyamine analogues, which have . . . shown very significant anticancer activity against several cancer cell lines. . . .

It is worth pointing out that one of the polyamine analogues that I synthesized, (S)-N¹-(2-methyl-1-butyl)-N¹¹-ethyl-4,8-diazaundecane (IPENSpm) initiates the cancer cell death program and possesses very significant antitumor activity.

The petitioner indicates that he has completed six projects at WSU, and produced published articles that have been "cited 8 times by peer scientists around the world." The petitioner adds that he possesses expertise that is "very essential for the latest computational approaches to anticancer drug discoveries now and in the future."

The petitioner submits six witness letters which he describes as being "from well-established experts and researchers all over the world." [REDACTED], an assistant professor at WSU, was the petitioner's dissertation advisor. [REDACTED] states:

During his graduate training, [the petitioner] has contributed to the scientific community's understanding of the role of polyamines in cellular function, and has synthesized a number of alkylpolyamines, some of which have impressive antitumor activity. Using the analogues he synthesized, we have been able to demonstrate that alkylpolyamines induce apoptosis and alter tubulin polymerization in tumor cells. One of these analogues, IPENSp_m, was selected for in vitro screening by the National Cancer Institute, and is also being evaluated in vivo by our collaborators. His work has been published in well respected journals . . . and he has made a significant contribution to the chemical and biological literature in this area.

[REDACTED] associate professor at WSU, concurs that the petitioner has "made significant contributions to the field of polyamine analogues." [REDACTED] enumerates these contributions in technical terms. [REDACTED] vice president of Shenyang Pharmaceutical University (where the petitioner studied before coming to the U.S.), asserts "it is fair to say that [the petitioner] has received international recognition, and his expertise is extremely needed for the anticancer drug research at a high level."

[REDACTED] manager of the Life Sciences Program at Michigan Economic Development Corporation and, like the petitioner, holder of a Ph.D. from WSU, states that he "first met [the beneficiary] in 1996 when he came to Wayne State University as a graduate research assistant." [REDACTED] states that the petitioner "has contributed immensely to the research of polyamine analogues." [REDACTED] senior scientist at Novartis Pharmaceuticals, states "I knew [the petitioner] when I was in China." [REDACTED] asserts that, at WSU, the petitioner "established himself as one of the few most successful and highly acclaimed researchers in his research area" and that the petitioner "has also achieved great success in the research on polyamine analogues against malarial and other infective diseases."

[REDACTED] technical group leader at Barr Laboratories, Inc., first met the petitioner at an annual meeting of the American Chemical Society. [REDACTED] states:

At the meeting, [the petitioner] gave a very impressive presentation of his new method in synthesizing the chemical compound IPENSp_m. I was impressed not only by [the petitioner's] innovation in synthesizing this particular compound, but

also by his prediction regarding the potential application of this compound in medical therapy. . . .

[The petitioner's] innovative approach in synthesizing polyamine analogues has far-reaching implications in the anticancer research field. Polyamines have great metabolic and cellular importance and thus polyamine analogues with different structures and functions are in great demand.

Three of the above witnesses are professors who have taught the petitioner at WSU and at Shenyang Pharmaceutical University; only one [REDACTED] claims no long-time connection with the petitioner.

The petitioner also submits copies of two published articles he co-authored with [REDACTED] and other collaborators. One of these articles was cited seven times, the other article one time, thus documenting the eight citations claimed by the petitioner. Three of these eight citations (including the sole citation of the second article) are self-citations by [REDACTED], and one of the remaining five citations is by D.E. McCloskey, who has also collaborated with [REDACTED]. Thus, only four of the citations appear to be fully independent of [REDACTED] research group.

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner asserts that his efforts "significantly contribute to the frontier exploring [means] of conquering . . . cancers, malaria, and many other fatal diseases" and that he has synthesized compounds that "have shown very significant anticancer activity against several cancer cell lines." The petitioner states "it's clear that my contribution to the anticancer drugs research has national influence," and observes that he possesses expertise in computer programming that is rarely encountered in the field of pharmacology.

The petitioner submits additional witness letters. Professor [REDACTED] chairman of the Department of Pharmaceutical Sciences at WSU, states that the petitioner "is one of the research backbones of [REDACTED] lab. His research findings have made significant contributions to our understanding of the anticancer polyamine analogues." Prof. Corcoran asserts that the petitioner's "professional abilities and productivity in medicinal chemistry and drug discovery/development are important to future advancements in his fields of expertise."

One of the petitioner's former collaborators [REDACTED] now a research scientist for Maxim Pharmaceuticals, deems the petitioner to be "a thorough expert in anticancer drug discovery research" with "important achievements" and "many innovative ideas." [REDACTED] who has known the petitioner "since he was a research scientist [at] [REDACTED] Pharmaceutical University," states that the petitioner's "most extraordinary scientific contributions are the breakthrough achievements in anti-cancer polyamine analogue synthesis research."

Like the original group of letters, this second group contains only one letter not from an apparent collaborator or long-time associate. A witness whose signature is not fully legible (the surname appears to be "Gu"), a senior research scientist at Wyeth-Ayerst Research, states that the petitioner "gave an impressive presentation about polyamine analogues" at a meeting of the American Chemical Society. The witness indicates that the petitioner has "risen to the top of the field of anticancer polyamine analogue research" and that the petitioner's "publications are cited many times by peer scientists around the world."

As noted above, the "many" citations amount to eight, half of which are self-citations by Dr. [REDACTED] or citations by [REDACTED] collaborators. With regard to the assertion that the citations are by "scientists around the world," only one citing research group is based outside of the United States (in Greece). Another research group includes two group members based respectively in Austria and Japan, but consists predominantly of researchers in New Jersey.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work but finding that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. The director found that the evidence does not "establish that the alien's work is known and considered unique outside his immediate circle of colleagues." The director rejected general arguments by the petitioner to the effect that scientists, as a class, ought to be exempt from labor certification because that requirement interferes with the mobility and employability of researchers.

On appeal, the petitioner argues that labor certification is not available for postdoctoral researchers. This is true, because postdoctoral appointments are generally temporary training assignments rather than permanent career positions. Still, the question remains as to why the petitioner requires permanent immigration benefits in order to remain in a temporary position already covered by a nonimmigrant visa. The petitioner has submitted numerous letters from witnesses with permanent or tenured positions, demonstrating that permanent employment is neither impossible nor anomalous among researchers.

The petitioner submits updated citation information, showing an incremental increase in the citation of his work, from eight citations in the original submission to eleven on appeal. One of the three new citations is a self-citation by a collaborator. While self-citation is a common and accepted practice, it is certainly no indication of broader impact.

The importance of anticancer drug research is self-evident beyond any serious dispute. The pertinent statute and regulations, however, do not allow for automatic blanket waivers as a result of a given alien's career choice. Because there is no provision to provide waivers for every anticancer drug researcher, the petitioner must demonstrate as objectively as possible that his work in this area is of special significance and importance beyond the intrinsic merit inherent in all such work. One could reasonably expect that research of particular importance would be noticed and acknowledged outside of the group that conducted such research. The record does not show that the petitioner's work has, thus far, earned such attention, or that measurable

benefits arising from the petitioner's efforts have progressed beyond speculation (i.e., what benefits might eventually accrue at some unspecified future time, provided that unspecified conditions are eventually met).

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.